IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RFA No. 281 of 1997 with RFA Nos. 151, 152, 155, 255, 256, 306, 313 of 1997 and RFA No. 39 of 1998.

Judgement reserved on: 12.7.2007.

Date of decision: 23.8.2007.

[For title, please see reverse]

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellants : **Mr. M.S.Chandel, Advocate General with Mr. Ashutosh Burathoki, Addl. Advocate General.**

For the Respondents : **Mr. Sunil Mohan Goel, Advocate vice Mr. Ajay Mohan Goel, Advocate.**

(In all the appeals)

Kuldip Singh, Judge.

This judgement shall dispose of nine appeals, i.e. RFA Nos. 281, 151, 152, 155, 255, 256, 306, 313 of 1997 and RFA No. 39 of 1998, arising out of Reference Case Nos. 48 of 1994, 58 of 1994, 54 of 1994, 50 of 1994, 59 of 1994, 53 of 1994, 49 of 1994, 55 of 1994 and 51 of 1994, respectively, decided by common award, dated 27.8.1996 read with order dated 3.6.1997 by learned Additional District Judge, Kullu, District Kullu.

2. The facts in brief are that Government of Himachal Pradesh, Department of Public Works, issued notification, under Section 4 of the Land Acquisition Act, 1894 (for short, the Act), for

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Whether the reporters of the local papers may be allowed to see the Judgment?

acquisition of land measuring 11-11-08 Bighas, situate in Phati Bini, Kothi Chehni, Tehsil Banjar, District Kullu for public purpose i.e. construction of Chiladhar-Bihar road, which was published in the Gazette on 6.5.1989. The Collector announced the award on 20.2.1991. The land owners filed reference petitions, under Section 18 of the Act, for enhancement of compensation for the land, trees and damage caused to their other adjoining land due to the construction of the road on the acquired land..

RFA No. 281/97 (Reference Case No. 48/94)

3. In this case, land measuring 0-12-17 Bighas situate in Phati Bini of the land owners was acquired. It was the case of the land owners that they have been awarded insufficient and inadequate compensation. The market value of the land in Phati Bini at the time of the publication of the Notification, under Section 4 of the Act was Rs. 1,00,000/- per Bigha. The land owners have claimed compensation for 12 apple trees, 4 other fruits trees and 4 Mohru trees. The land owners had claimed Rs. 65000/- for damage caused to the trees and Rs. 75000/- compensation on account of injurious effect on the other land of the land owners due to construction of the road. They have claimed enhanced compensation at the rate of Rs. 1,00,000/- per Bigha, alongwith other statutory payments.

RFA No. 306/97 (Reference Case No. 49 of 1994)

4. The land measuring 1-9-18 bighas Bathal Dom, Bathal Som, Banjar Kadim, situate in Phati Bini was acquired in this case. The land owners had claimed Rs. 2,00,000/- compensation for different

varieties of fruit and non-fruit trees, which according to the land owners were damaged at the time of construction of the road.

RFA No. 155/97 (Reference Case No. 50 of 1994)

5. The land measuring 0-10-9 Bighas Bathal, Som, Bathal Dom and Gair Mumkin, situate in Phati Bini was acquired in this case. The land owner has claimed compensation on account of retaining wall and for fruit trees which were damaged at the time of construction of the road.

RFA No. 39/98 (Reference Case No. 51 of 1994)

6. The land measuring 0-13-17 Bighas Banjar Kadim, situate in Phati Bini was acquired in this case. The land owners had claimed Rs.35000/- on account of damage to Deodar trees, which were standing on the acquired land. An amount of Rs.70000/- was also claimed by the land owners on account of damage to their adjoining land caused by the construction of the road. They have submitted that less compensation has been paid to them for the land.

RFA No. 256/97 (Reference Case No. 53 of 1994)

7. The land measuring 0-6-12 Bighas Banjar Kadim, situate in Phati Bini was acquired in this case. The land owner has also claimed compensation for 50 Deodar trees, which were standing on his acquired land.

RFA No. 152/97 (Reference Case No. 54 of 1994)

8. The land measuring 1-2-18 Bighas, Bathal Som, Gair Mumkin, situate in Phati Bini, was acquired in this case. The land owner had claimed Rs.40000/- for Ban and Fagu trees, which were standing on the acquired land.

RFA No. 313/97 (Reference Case No. 55 of 1994)

9. The land measuring 2-6-16 Bighas, Bathal Som, Bathal Chaharam and Banjar Kadim, situate in Phati Bini, was acquired in this case. The land owners claimed Rs.1,45,000/- for Ban, Mohru and Deodar trees which were standing on the acquired land. They have also claimed Rs.25,000/- for retaining wall as well as for injurious effect on their other land adjoining to the acquired land.

RFA No. 151/97 (Reference Case No. 58 of 1994)

10. The land measuring 0-8-15 Bighas, Bagicha Bathal, Banjar Kadim, Gair Mumkin, situate in Phati Bini, was acquired in this case. The land owner has also claimed Rs.60000/- on account of damage to apple trees which were standing on the acquired land.

RFA No. 255/97 (Reference Case No. 59 of 1994)

11. The land measuring 0-17-1 Bighas, Bathal Dom and Som, situate in Phati Bini, was acquired in this case. The land owners claimed Rs.70000/- compensation on account of retaining wall on the acquired land and Rs.80000/- for apple trees. They have also submitted that their adjoining land measuring 1 Bigha was damaged due to acquisition of land and they have claimed Rs.70000/- for this purpose.

12. The land owners in all cases except RFA No. 255 of 1997 had claimed compensation of the acquired land at the rate of Rs.1,00,000/- per bigha but in RFA No. 255 of 1997 compensation for acquired land has been claimed at the rate of Rs.2,00,000/- per bigha. The land owners had prayed enhancement of compensation and

payment of statutory amounts as per the Act on the enhanced amount of compensation.

13. The learned Additional District Judge, vide order dated 25.3.1995 in Reference Case No. 48 of 1994, consolidated all the cases and thereafter recorded the evidence. The learned Additional District Judge, vide common award dated 27.8.1996, has assessed the market value of the acquired land at the rate of Rs.35000/- per Bigha of Bathal Bagicha, Rs. 25000/- per Bigha of Bathal Dom and Som and Rs.15000/- of Banjar Kadim. On the enhanced compensation, 30% solatium and 12% additional charges under Section 23 (1-A) of the Act have also been awarded, 9% per annum interest has been awarded with effect from 1.3.1989 for the first year and thereafter at the rate of 15% per annum till the date of payment. The learned Additional District Judge has awarded nothing for damage to the trees and for injury/ damage caused to the adjoining land of the land owners by the acquisition of the land, as claimed by them. The Additional District Judge made some corrections in the award, dated 27.8.1996, vide order dated 3.6.1997.

14. The Collector and State of Himachal Pradesh in all the above appeals have assailed the award, dated 27.8.1996, passed by the learned Additional District Judge, Kullu. I have heard the learned counsel for the parties and gone through the record.

15. Learned Advocate General has submitted that excess compensation to the land owners has been awarded. The sale deeds Ex. PW 1/A, Ex. PW 1/B and Ex. PW 1/C, have been wrongly relied and the sale deeds Ex. R-1, Ex. R-2, Ex. R-3, Ex. R-4 and Ex. R-5

have been wrongly ignored by the learned Additional District Judge for assessing the market value of the acquired land. The learned counsel for the land owners has supported the impugned award.

16. PW 1 Tek Chand Verma has stated that his land as well as land of his brother Gian Chand was acquired, his father Parma Nand was earlier owner of this land. He has stated that land measuring 0-3-15 Bighas was purchased, vide sale deed Ex. PW 1/A, in the name of his father for a consideration of Rs. 9000/-. The land was sold by Dur Singh, who has since died. He was also present at the time of execution of the sale deed. The land was sold by the vendor voluntarily, vide sale deed Ex. PW 1/A. He purchased 1 Bigha14 Biswas land for a consideration of Rs.20000/- from Inder Singh in the year 1986, vide sale deed Ex. PW 1/B. This sale deed was executed in the name of his father in his presence. Inder Singh has died. He has also stated that vide sale deed Ex. PW 1/C Dhani Ram has sold land to Brij Mohan. He has stated that the acquired land has high potential value and is at a distance of ¾ kilometers from Banjar.

17. RW 1 Brij Lal Sharma, Junior Engineer has stated that land owners were paid amount of the acquired land as per market rate. He has stated that he is not aware if in March, 1989 the market value of the acquired land was Rs.2,00,000/- per bigha. He has stated that he is not aware what was per bigha rate of the land. He has stated that he has not inquired the market value of the acquired land from Patwari. Sh. Gianender Singh District Attorney, has tendered in evidence, copy of sale deeds Ex. R-1, Ex. R-2, Ex. R-3, Ex. R-4 and Ex. R-5.

18. As per sale deed, Ex. PW 1/A dated 23.1.1989, land measuring 0-3-15 bighas, situate in Phati Bini, Kothi Chehni, was sold for a consideration of Rs.9000/-. According to sale deed Ex. PW 1/B, dated 31.3.1996, land measuring 1-14-0 Bigha in Phati Bini, Kothi Chehni, was sold for a consideration of Rs.20000/- and as per sale deed Ex. PW 1/C dated 29.11.1988 land measuring 0-1-15 Bigha in Phati Bini, Kothi Chehni, was sold for a consideration of Rs.5000/-. The acquired land is also situated in Phati Bini, Kothi Chehni.

19. As per sale deed Ex. R-1 dated 20.4.1988, land measuring 2 Bigha 7 Biswas was sold for a consideration of Rs.1000/-, vide sale deed Ex. R-2 dated 2.6.1988, land measuring 2 Bighas 3 Biswas was sold for a consideration of Rs.600/-, vide sale deed Ex. R-3 dated 9.5.1989 land measuring 6 Bighas 8 Biswas was sold for a consideration of Rs.9500/-, vide sale deed Ex. R-4 dated 23.9.88 land measuring 1 Bigha 5 Biswas was sold for a consideration of Rs.2000/-, vide sale deed Ex. R-5 dated 3.6.1989 land measuring 1 Bigha 5 Biswas was sold for a consideration of Rs.2000/-.

20. The Notification under Section 4 of the Act was published on 6.5.1989 in the Gazette. The sale deeds Ex. PW 1/A, Ex. PW1/B and Ex. PW 1/C are much prior to 6.5.1989. The land measuring 11-11-8 Bighas was acquired for construction of Chiladhar- Bihar road. PW 1 Tek Chand Verma has proved the transactions of sale deeds Ex. PW 1/A and Ex. PW 1/B. He has stated that Dur Singh and Inder Singh vendors of sale deeds Ex. PW 1/A and Ex. PW 1/B have died. He has also stated that acquired land is ¾ Kilometer from Banjar. He has deposed regarding the potentiality of acquired land. The sale

deeds Ex. PW 1/A to Ex. PW 1/C are of small areas but individual acquired land of each land owner is also of small area. Therefore, the sale deeds Ex. PW 1/A, Ex. PW 1/B and Ex. PW 1/C are relevant for assessing the market value of the acquired land.

21. The location of acquired land near Banjar in itself is a strong circumstance for assessing its market value. It has come on record that acquired land was suitable for agriculture, horticulture and for construction of commercial buildings. The acquired land was also suitable for raising orchards. The acquired land was in the nature of Bagicha Bathal, Bathal Dom, Banjar Kadim etc. The acquired land being near to Banjar town had high potential value. It has not been disputed that the market value of land as per sale deed Ex. PW 1/A comes to Rs. 48000/- per bighas and as per sale deed Ex. PW 1/B comes to Rs. 11765/- per bigha and market value of land covered by sale deed Ex. PW 1/C comes to Rs. 57143/- per bigha. RW 1 Brij Lal Sharma, Junior Engineer has stated that he is not aware what was the rate of the acquired land in the year 1989, or whether it was Rs. 2,00,000/- per Bigha. He has also stated that he did not inquire from the Patwari regarding the market value of the acquired land. It is thus clear that RW 1 is not aware of the market value of the acquired land in the year 1989, when the notification, under Section 4 was published.

22. The respondents have placed nothing on record to show that sale considerations mentioned in sale deeds Ex. PW 1/A, Ex. PW 1/B and Ex. PW 1/C were not the actual sale considerations. The sale deeds Ex. PW 1/A, Ex. PW 1/B and Ex. PW1/C are much prior to the

notification, under Section 4 of the Act. In these circumstances, it cannot be presumed that sale deeds Ex. PW 1/A, Ex. PW 1/B and Ex. PW 1/C were executed in order to enhance the market value of the acquired land. Therefore, it can be safely inferred that sale deeds Ex. PW 1/A, Ex. PW 1/B and Ex. PW 1/C are genuine sale transactions.

23. The respondents have brought on record sale deeds Ex. R-1, Ex. R-2, Ex. R-3, Ex. R-4 and Ex. R-5. It has not been proved by the respondents that lands covered in sale deeds Ex. R-1, Ex. R-2, Ex. R-3, Ex. R-4 and Ex. R-5 are comparable to acquired land. The vendors and vendees of sale deeds Ex. R-1, Ex. R-2, Ex. R-3, Ex. R-4 and Ex. R-5 have not been examined. There is no evidence on record to show comparative potentialities of acquired land and lands covered by sale deeds Ex. R-1, Ex. R-2, Ex. R-3, Ex. R-4 and Ex. R-5. Therefore, the sale deeds Ex. R-1, Ex. R-2, Ex. R-3, Ex. R-4 and Ex. R-5 brought on record by the respondents cannot be relied for assessing the market value of the acquired land. In absence of supporting material on record regarding the comparative potentialities of acquired land and lands covered under sale deeds Ex. R-1, Ex. R-2, Ex. R-3, Ex. R-4 and Ex. R-5, the learned Additional District Judge has rightly relied the sale deeds Ex. PW 1/A, Ex. PW 1/B and Ex. PW 1/C in preference to sale deeds Ex. R-1, Ex. R-2, Ex. R-3, Ex. R-4 and Ex. R-5 for assessing the market value of the acquired land and has rightly assessed the market value of Bathal Bagicha at Rs. 35000/- per Bigha, Bathal Dom and Som at Rs. 25000/- per Bigha and Banjar Kadim at Rs. 15000/- per Bigha of the acquired land. He has correctly awarded other statutory amounts on the enhanced compensation. No case for

interference is made out by the appellants, hence all the appeals being RFA Nos. 281, 151, 152, 155, 255, 256, 306, 313 of 1997 and RFA No. 39 of 1998 are dismissed and the impugned award alongwith order dated 3.6.1997 are confirmed. No costs.

August 23, 2007. **(Kuldip Singh)**
(*Hem)* **Judge.**

1. **RFA No. 281 of 1997.**
Collector Land Acquisition & anr. ..... Appellants.
Vs.
Smt. Manorma & ors. .....Respondents.

2. **RFA No. 151 of 1997.**
Collector Land Acquisition & anr. ..... Appellants.
Vs.
Prem Singh .....Respondent.

3. **RFA No. 152 of 1997.**
Collector Land Acquisition & anr. ..... Appellants.
Vs.
Dot Ram .....Respondent.

4. **RFA No. 155 of 1997.**
Collector Land Acquisition & anr. ..... Appellants.
Vs.
Bir Singh .....Respondent.

5. **RFA No. 255 of 1997.**
Collector Land Acquisition & anr. ..... Appellants.
Vs.
Gagan Singh & ors. .....Respondents.

6. **RFA No. 256 of 1997.**
Collector Land Acquisition & anr. ..... Appellants.
Vs.
Kumbh Dass .....Respondent.

7. **RFA No. 306 of 1997.**
Collector Land Acquisition & anr. ..... Appellants.
Vs.
Maya Ram & anr. .....Respondents.

8. **RFA No. 313 of 1997.**
Collector Land Acquisition & anr. ..... Appellants.
Vs.
Gian Chand & anr. .....Respondents.

9. **RFA No. 39 of 1998.**
Collector Land Acquisition & anr. ..... Appellants.
Vs.
Hom Dutt & ors. .....Respondents.